

**BELL COUNTY SCHOOL DISTRICT**

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July 3, 2017

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street SW  
Washington, DC 20554  
ELECTRONICALLY FILED VIA ECFS

**Re CC Docket No. 02-6**

**In the matter of Request for Review by Bell County School District of a  
Decision of the Universal Service Administrator**

**Funding App #161923 FRN 318099 cited on FCC Form 486 #1200569**

**Funding App #258334 FRN 654138 cited on FCC Form 486 #1200570**

**Funding App #537391 FRN 1487829 cited on FCC Form 486 #1200571**

**Funding App #537311 FRN 1487422 cited on FCC Form 486 #1200571**

Dear Secretary Dortch,

With this letter Bell County School District ("BCSD") appeals<sup>1</sup> decisions by the Universal Service Fund Administrator ("USAC")<sup>2</sup> under the Schools and Libraries Universal Service Support Mechanism (commonly known as "E-Rate") to deny our request on appeal to USAC<sup>3</sup> to set the funding Service Start Date to the first day of the funding year for the captioned Funding Requests.

**Background**

BCSD serves over 3,000 students at eight campuses in Bell County, Kentucky. In support of our commitment to educational equity, we are especially proud of our efforts to identify and intervene in cases where students encounter impediments to educational success.

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<sup>1</sup> Any party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, may then seek review from the Federal Communications Commission; see 47 CFR § 54.719(b).

<sup>2</sup> See USAC appeal decisions attached as Exhibit B.

<sup>3</sup> See our 1/27/2017 appeal letter to USAC attached as Exhibit A.

During an internal review we recently determined that staff had inadvertently failed to file certain required FCC Forms 486; when we recognized the error, we promptly completed and submitted the missing forms.

Although BCSD management does exercise its best efforts to ensure compliance with all E-Rate rules and deadlines, realistically it is beyond the control of BCSD to totally eliminate the possibility of the isolated clerical or administrative error.

### **Analysis**

Due to factors not reasonably within its control, BCSD was unable to fully comply with the requirement to file Form 486 by the normal 120 day limit after the latter of the service start date and the Funding Commitment Decision Letter. To the best of our knowledge we are otherwise in full compliance with applicable FCC rules and USAC procedures.

In *Alaska Gateway*<sup>4</sup> the Bureau found that where special circumstances are present and an FCC Form 486 was not filed on a timely basis, good cause exists to grant a waiver of the filing deadline and direct USAC to process the applicant's FCC Form 472 reimbursement application without a postponement of the funding start date. The Bureau noted that in these cases the applicants missed a procedural deadline and did not violate a substantive rule. The Bureau has consistently applied the *Alaska Gateway* standard in subsequent orders granting waivers of the Form 486 filing deadline, including *State of Arkansas Department of Information Systems*<sup>5</sup>, *Alcona County Library*<sup>6</sup>, *Children of Peace School*<sup>7</sup>, *Academy St. Benedict – Stewart*<sup>8</sup>, *Bancroft Neurohealth*<sup>9</sup>, *Archdiocese of Chicago School*<sup>10</sup>, *Beebe Public Schools*<sup>11</sup>, and *Albertville City Schools*<sup>12</sup>.

The cited orders are consistent with *Bishop Perry*<sup>13</sup>, where the Commission found that under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Telecommunications Act of 1996 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

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<sup>4</sup> *Alaska Gateway School District et al*, 21 FCC Rcd 10182 (2006)

<sup>5</sup> *State of Arkansas Department of Information Systems et al*, 23 FCC Rcd 9373 (2008)

<sup>6</sup> *Alcona County Library et al*, 23 FCC Rcd 15500 (2008)

<sup>7</sup> *Children of Peace School et al*, 25 FCC Rcd 5492 (2010)

<sup>8</sup> *Academy St. Benedict – Stewart et al*, 25 FCC Rcd 17309 (2010)

<sup>9</sup> *Bancroft Neurohealth et al*, 26 FCC Rcd 10948 (2011)

<sup>10</sup> *Archdiocese of Chicago School*, 27 FCC Rcd 200 (2012)

<sup>11</sup> *Beebe Public Schools*, 27 FCC Rcd 3930 (2012)

<sup>12</sup> *Albertville City Schools*, 27 FCC Rcd 6094 (2012)

<sup>13</sup> *Bishop Perry Middle School et al*, 21 FCC Rcd 5316 (2006)

The Bureau further noted in *Alaska Gateway* and in *Alcona County Library* that denying the petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. That would certainly be the case if BCSD were to be denied the opportunity to request reimbursement for its eligible expenses for the entirety of the funding year. The consequences of a denial of funding would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

The Bureau recently gave notice in *Archdiocese of New Orleans*<sup>14</sup> that a less-flexible standard will apply to appeals of USAC's denial of requests to late-file FCC Forms 486 when initial appeals are filed on or after January 30, 2017, and in the same order the Bureau stated that the *Alaska Gateway* standard would apply to appeals filed prior to that date. We filed our initial appeal with USAC on January 27, 2017; therefore, the *Alaska Gateway* standard applies to our request for review of USAC's denial of our initial appeal. USAC erred in failing to grant relief consistent with *Alaska Gateway* and Bureau guidance in *Archdiocese of New Orleans*.

### **Request for Relief**

For the reasons stated in this letter, BCSD respectfully requests that the Bureau direct USAC to set the Service Start Date to the first day of the funding year for each cited funding request. We also ask that the Bureau, consistent with precedent, direct USAC to waive any of its subsequent deadlines related to the late-filed FCC Form 486<sup>15</sup>, including the deadline for invoicing USAC for reimbursement<sup>16</sup>.

Finally, on behalf of our current students, BCSD respectfully requests that the Bureau expedite consideration of this petition. Timely action by the Bureau would support the goals of the E-Rate program, especially with respect to our current students whose educational success would be compromised by a delay in our receipt of our committed E-Rate reimbursement funds.

BELL COUNTY SCHOOL DISTRICT

Steve Silcox  
Director of Finance

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<sup>14</sup> See *Archdiocese of New Orleans et al*, 31 FCC Rcd 11747 (2016)

<sup>15</sup> E.g., see *Children of Peace School et al*, footnote 24

<sup>16</sup> For example, the Bureau might clarify that when USAC notifies us that the Service Start Date has been set to the first day of the funding year, such notification will be deemed to have the effect of an FCC Form 486 Notification Letter (regardless of whether the letter is explicitly identified as such) with respect to the invoice deadline provisions at 47 CFR § 54.514(a)(2).

EXHIBIT A

TO JULY 3, 2017 REQUEST FOR REVIEW  
BY BELL COUNTY SCHOOL DISTRICT  
OF A DECISION OF THE  
UNIVERSAL SERVICE ADMINISTRATOR

JANUARY 27, 2017 APPEAL LETTER  
FROM DAVID A. BEHAR  
TO UNIVERSAL SERVICE ADMINISTRATIVE COMPANY  
*and*  
USAC SUBMISSION RECEIPT CONFIRMATION



# E-Rate Support Services

*"Your source for E-Rate support"*

P.O. Box 40204 • Spokane, WA 99220  
ph. 206-856-7349 • email [david@eratesupportservices.com](mailto:david@eratesupportservices.com)

January 27, 2017

Schools and Libraries Program Correspondence Unit  
Attn: Letter of Appeal  
Parsippany, NJ  
VIA EMAIL [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org)

Re: Bell County School District (BEN 128848)  
Service Start Date adjustment for FCC Forms 486 Nos. 1200569, 1200570, and 1200571

In recent days applicant Bell County School District ("Applicant") electronically submitted the captioned FCC Forms 486, and today Applicant mailed signed certification pages for each FCC Form 486. In an abundance of caution, the certification forms were sent in duplicate, with one set sent via USPS Priority express (Tracking Number EL 555369377 US), and the second set sent via FedEx (Tracking Number 785435963827).

These Form 486s are submitted after the E-Rate procedural deadline<sup>1</sup> due to factors which included staff changes, staff shortages due to limited budgets, and confusion about filing requirements.

In the *Archdiocese of New Orleans Order*<sup>2</sup> the Federal Communications Commission ("Commission") addressed the issue of late-filed FCC Forms 486. The Commission noted that in the earlier *Alaska Gateway Order*<sup>3</sup> and its progeny, it has been Commission policy to liberally grant appeals of service start date adjustments coming from late-filed FCC Forms 486, where such late filings come from such factors as staff confusion, mistakes, or a variety of other factors.

In the *Archdiocese of New Orleans Order* the Commission stated that a change in policy for late-filed FCC Form 486 appeals would be effective with appeals filed on or after

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<sup>1</sup> FCC Form 486 must be received or postmarked no later than 120 days after the Service Start Date shown on the FCC Form 486 or 120 days after the date of the FCDL, whichever is later (<http://usac.org/sl/applicants/step05/form-486.aspx>, retrieved 1/27/2017).

<sup>2</sup> See *Archdiocese of New Orleans Order* (31 FCC Rcd 11747, released 10/20/2016).

<sup>3</sup> See *Alaska Gateway Order* (21 FCC Rcd 10182, released 9/14/2006).

Schools and Libraries Program Correspondence Unit  
Attn: Letter of Appeal  
January 27, 2017  
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January 30, 2017. However, the order further stated that “[i]n the interest of fairness, we will continue to apply the current Alaska Gateway Order-based standard to appeals filed with USAC or the Commission before January 30, 2017”.

Applicant prays that in conformance with the Commission’s guidance in the *Archdiocese of New Orleans Order*, the service start date for each Funding Request listed in the FCC Forms 486 is not adjusted due to the late filing, but rather that the service start date is set to be the first day of the applicable funding year.

Please feel free to contact me regarding this matter; my contact information appears on the first page of this letter.

Respectfully,



David A. Behar



David B &lt;david271@gmail.com&gt;

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## Appeal

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**Appeals** <appeals@sl.universalservice.org>

Fri, Jan 27, 2017 at 8:55 PM

To: "David A. Behar" &lt;david@eratesupportservices.com&gt;

Thank you for submitting your correspondence by e-mail to the Schools & Libraries Division (SLD) of the Universal Service Administrative Company.

This message serves as a receipt confirmation of your submission.

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EXHIBIT B

TO JULY 3, 2017 REQUEST FOR REVIEW  
BY BELL COUNTY SCHOOL DISTRICT  
OF A DECISION OF THE  
UNIVERSAL SERVICE ADMINISTRATOR

**INDEX OF USAC APPEAL DECISION LETTERS**

1. USAC 5/4/2017 letter re Funding App #537311
2. USAC 5/4/2017 letter re Funding App #537391
3. USAC 5/12/2017 letter re Funding App #161923
4. USAC 5/12/2017 letter re Funding App # 258334



Due to a technical issue with image scanning equipment, copies of USAC appeal decision letters will be submitted as a supplemental filing via ECFS later this week.